



**CITY OF LODI  
COUNCIL COMMUNICATION**

**AGENDA TITLE:** Introduce Ordinance Repealing and Re-enacting Lodi Municipal Code Chapter 12.06 Downtown Lodi Business Improvement Area No. 1, Section 12.06.090, "Collection of Benefit Fee," and Chapter 3.01 Business Tax Certification, Section 3.01.460, "Enforcement," Relating to Collection and Enforcement of Various Fees.

**MEETING DATE:** January 7, 2004

**PREPARED BY:** City Attorney

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**RECOMMENDED ACTION:** That the City Council introduce ordinance amending the collection procedures for unpaid Business Improvement Area (BIA) assessments and business taxes.

**BACKGROUND INFORMATION:** Currently, the failure to pay business taxes and BIA assessments is subject to punishment by citation as an infraction and a misdemeanor, respectively. Absent legislative authority, citations may only be issued by a peace officer. Based upon experience issuing citations for unpaid assessments, Lodi Police Department requested that the City Attorney's Office draft these revisions to the Lodi Municipal Code to authorize a Finance Department employee to issue citations. The revision will serve to appropriately direct public safety resources to those areas where they are most needed.

During review of the ordinance, various departments noted other areas for improvement. First, unpaid BIA assessments are subject to a misdemeanor prosecution while unpaid business taxes are punishable as an infraction. Since the two violations are of equal degree, the City Attorney's Office recommends that the BIA assessment violation be lowered to an infraction.

The revisions also include the Finance Department's recommendations to clarify the due dates and late penalties attendant to late payment of BIA assessments.

**FUNDING:** None Required.

Respectfully submitted,

A handwritten signature in cursive script that reads "Randall A. Hays".

Randall A. Hays  
City Attorney

Attachments

cc: Kevin Bell, Finance Department

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APPROVED:

A handwritten signature in cursive script that reads "H. Dixon Flynn".

H. Dixon Flynn, City Manager

## ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LODI  
 REPEALING AND REENACTING LODI MUNICIPAL CODE SECTIONS  
 12.06.070, "EXCLUSIONS FROM BENEFIT FEES," 12.06.090,  
 "COLLECTION OF BENEFIT FEE," AND 3.01.460, "ENFORCEMENT,"  
 RELATING TO EXCLUSIONS, COLLECTION, AND ENFORCEMENT  
 OF VARIOUS FEES

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BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LODI AS FOLLOWS:

SECTION 1. Section 12.06.070 Exclusions from Benefit Fees - is hereby repealed and reenacted as follows:

- A. No person or business shall be required to pay a fee based on a residential use of the property within the area, or a nonprofit organization as defined by Section 501(c)(3) or 501(c)(6) of the Internal Revenue Service Code located within the area.

SECTION 2. Section 12.06.090 Collection of Benefit Fee - is hereby repealed and reenacted as follows:

Section 12.06.090 Collection of Benefit Fee/Enforcement of Benefit Fee:

- A. The benefit fee authorized by this chapter, for Lodi businesses (Section 12.06.050 hereof), shall be billed and collected once each year on January 1<sup>st</sup> and shall be delinquent on January 31<sup>st</sup> of each year. City will bill and collect the fees, at no charge to the area, and forward all funds collected to the area within thirty days of such collections. Late payment penalties shall be applied to businesses that are delinquent at the rate of 10% of the benefit fee per month on the first day of each month after the delinquency thereof; provided, however, the total amount of such penalty to be added shall, in no event, exceed 100% of the amount of the benefit fee due. At such time as late payment penalties equate to thirty percent of the total annual fee, action shall be taken to recover such delinquent fees. Costs of this recovery shall be borne by the business owing the fee and late penalties.
- B. The Finance Director shall diligently enforce the provisions of this Chapter. For purposes of such enforcement, the Finance Director and the Finance Technicians (or equivalent position as it may be renamed from time to time) are "officers" who may issue citations to violators of this chapter pursuant to Chapter 1.08 of the Lodi Municipal Code.
- C. Any person who violates any provision of this chapter is guilty of an infraction and is subject to punishment as provided in Chapter 1.08 of the Lodi Municipal Code.

SECTION 3. Section 3.01.460 Enforcement - is hereby repealed and reenacted as follows:

- A. Duties of the Finance Director. It shall be the duty of the Finance Director to enforce each and all of the provisions of this chapter. For purposes of such enforcement, the Finance Director and Finance Technicians (or equivalent position as it may be renamed from time to time) are "officers" who may issue citations to violators of this Chapter pursuant to Chapter 1.08 of this code.

- B. Inspections. The Finance Director, in the exercise of the duties imposed by the provisions of this section, and acting through deputies of duly authorized assistants, shall have the right to enter and examine all places of business free of charge during normal business hours to ascertain whether the provisions of this chapter are being complied with.
- C. Penalty for Violation. Any person who violates any provision of this chapter by transacting and carrying on any business, trade, vocation, enterprise, establishment, occupation, or calling in the city without first having procured a business tax certificate is guilty of an infraction and is subject to punishment as provided for in Chapter 1.08 of the Lodi Municipal Code.

SECTION 4. No Mandatory Duty of Care. This ordinance is not intended to and shall not be construed or given effect in a manner, which imposes upon the City, or any officer, employee thereof, a mandatory duty of care towards persons or property within the City or outside of the City so as to provide a basis of all liability for damages, except as otherwise imposed by law.

SECTION 5 - Severability. If any provision of this ordinance or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application. To this end, the provisions of this ordinance are severable. The City Council hereby declares that it would have adopted this ordinance irrespective of the invalidity of any particular portion thereof.

SECTION 6. All ordinances and parts of ordinances in conflict herewith are repealed insofar as such conflict may exist.

SECTION 7. This ordinance shall be published one time in the "Lodi News-Sentinel," a daily newspaper of general circulation printed and published in the City of Lodi and shall be in force and take effect thirty days from and after its passage and approval.

Approved this \_\_\_\_ day of \_\_\_\_\_, 2004

\_\_\_\_\_  
SUSAN HITCHCOCK  
Mayor

Attest:

SUSAN J. BLACKSTON  
City Clerk

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State of California  
County of San Joaquin, ss.

I, Susan J. Blackston, City Clerk of the City of Lodi, do hereby certify that Ordinance No. \_\_\_\_\_ was introduced at a regular meeting of the City Council of the City of Lodi held January 7, 2004 and was thereafter passed, adopted and ordered to print at a regular meeting of said Council held \_\_\_\_\_, 2004, by the following vote:

AYES: COUNCIL MEMBERS –  
NOES; COUNCIL MEMBERS –  
ABSENT: COUNCIL MEMBERS –  
ABSTAIN: COUNCIL MEMBERS –

I further certify that Ordinance No. \_\_\_\_\_ was approved and signed by the Mayor on the date of its passage and the same has been published pursuant to law.

SUSAN J. BLACKSTON  
City Clerk

Approved as to Form:



RANDALL A. HAYS  
City Attorney